

P20536

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

ORDER

Application 29607 Permit 20536

**ORDER APPROVING CHANGE IN
ENVIRONMENTAL MITIGATION TERMS
AND AMENDING THE PERMIT**

WHEREAS:

1. Permit 20536 was issued to Heitz Wine Cellars on June 26, 1991, pursuant to Application 29607.
2. A petition to change Permit Terms 23 through 27 and 31 was filed with the State Water Resources Control Board on January 20, 1998.
3. The State Water Resources Control Board has determined that the proposed changes in Permit Terms 23 through 27 and 31 have no adverse environmental impacts.
4. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the permit making the permittee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Permit Terms 23 through 27 and 31 are amended to read as follows:
 23. To mitigate for the 138 large trees removed from MHC (montane hardwood conifer) habitat, permittee shall certify that at the end of the proposed 3 year monitoring period (July 31, 1999) there are at least 138 five-year-old trees (or older) surviving in MHC habitat designated locations on the Revised Mitigation Map 2, dated February 1997, on file with the SWRCB, Application 29606. 200 tree saplings shall be planted initially in accordance with the following species mix:

25 Coast redwood	<i>Sequoia sempervirens</i>
25 Douglas fir	<i>Pseudotsuga menziesii</i>
25 Live oak/Cork oak	<i>Quercus chrysolepis/suber</i>
50 Digger (Foothill) pine or Ponderosa pine	<i>Pinus sabiniana/ponderosa</i>
75 California black oak	<i>Quercus kelloggii</i>

Monitoring and certification of survival shall be by a registered landscape architect or registered forester. Each of the above trees shall be certified to be surviving for the final two years (1998 and 1999) of the monitoring without irrigation.

24. To mitigate for the 660 trees of young conifer and hardwood species removed from MHC (montane hardwood conifer) and COW (coastal oak woodland) habitat, permittee shall certify that at the end of the proposed 3 year monitoring period (July 31, 1999) there are at least 660 three-year-old trees (or older) surviving in MHC or COW habitat designated locations on the Revised Mitigation Map 2, dated February 1997, on file with the SWRCB, Application 29606. 800 tree seedlings shall be planted initially in accordance with the following species mix:

200 Coast redwood	<i>Sequoia sempervirens</i>
100 Digger (Foothill) pine	<i>Pinus sabiniana</i>
300 California black oak	<i>Quercus kelloggii</i>
100 Ponderosa pine	<i>Pinus ponderosa</i>
100 Douglas fir	<i>Pseudotsuga menziesii</i>

Monitoring of the plantings and certification of survival shall be by a registered landscape architect or registered forester. The plantation trees shall be certified to be surviving for the final two years (1998 and 1999) of the monitoring period without irrigation.

25. As a means of replacing the habitat characteristics of the mature forest stand that was removed, the below-listed diversity of artificial wildlife structures shall be provided as designated on the Revised Mitigation Map 1, dated February 1997, on file with the SWRCB, Application 29606. A total of 55 artificial structures or snags shall be provided in the following proportions:

- (A) Erect dead tree or girdle an existing tree for a total of 20 snags.
 - (B) Find existing trees with a large diameter (greater than 8") branch or top and drill 5 holes 1½" diameter by 8" and 5 holes of 3" diameter by 8" deep in each tree. The foregoing shall be implemented in 20 trees.
 - (C) Construct 15 bird houses which include 5 owl boxes, 5 nuthatch nest boxes and 5 wood duck boxes (the latter along the reservoir edge).
26. For the enhancement of wildlife values:
- (A) Cattle grazing shall be eliminated from the deer habitat on the project property.
 - (B) One acre of deer browse such as hollyleaf cherry (*Prunus ilicifolia*), leather oak (*Quercus durata*) or blue oak (*Quercus douglasii*) shall be planted at a rate of 200/acre and irrigated until establishment. Established plants are those that grow without irrigation for at least two years (1998 and 1999). Monitoring of the plantings shall be by a registered landscape architect or registered forester.
 - (C) Protect the main stream channel and the old access road on the northwest side of the vineyard as a diurnal mitigation route for deer. This route is designated DEER CORRIDOR on the Revised Mitigation Map 1, dated February 1997, on file with the SWRCB, Application 29606.
27. To accelerate the development of MRI (montane riparian) habitat around the new reservoir site, the following riparian trees shall be planted and maintained until established:

50 Valley oak or cork oak	<i>Quercus lobata/Q. suber</i>
50 Big-leaf maple	<i>Acer macrophyllum</i>
50 Red or white alder	<i>Alnus</i> spp.
50 Cottonwood or Poplar	<i>Populus</i> spp.
50 Native shrubs	<i>Prunus, Cercis, Arbutus & others</i>

The above species shall be planted and maintained until established in appropriate MRI designated locations on the reservoir Revised Mitigation Map 2, dated February 1997, on file with the SWRCB, Application 29606. Monitoring of the plantings and determination that the plantings are established shall be by a registered landscape architect or registered forester.

Additional wildlife enhancement measures will be:

- (A) Creation of a small coffer dam in the main drainage into the reservoir which will serve to retain a pond of water when the reservoir recedes.
- (B) Dumping a total of two pick-up loads of river gravel above the water line to spread on any gently-sloping portion of the proposed reservoir shoreline.
- (C) Planting fish in the completed reservoir, subject to approval from the Department of Fish and Game.

31. In accordance with the California Public Resources Code 21081.6, monitoring of the plantings shall be by a registered landscape architect or registered forester with forestland mitigation experience. Said registered professional will inspect the plantations in 1998 and 1999 to ensure that 138 of the saplings and 660 of the seedlings have been established. Said professional will also be contracted to monitor the planting riparian trees around the perimeter of the proposed reservoir and to ensure that the snags have been erected according to specifications.

The monitoring agent shall confirm that the coffer dam has been constructed and that the river-run gravel has been deposited above the waterline of the proposed reservoir.

A written monitoring report accompanied by photographs must be submitted annually to the State Water Resources Control Board Division Chief. Once the mitigation measures have been implemented, if confirmed in the 3rd annual compliance monitoring report, no further compliance monitoring reports will be required, but the enhanced wildlife values that have been created must be permanently maintained for as long as water is used by the authority of any permit or license issued pursuant to Permit 20536 (Application 29607).

2. An endangered Species term shall be added as Term 32 to the Permit to read as follows:

This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for

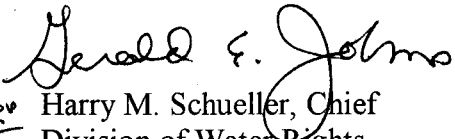
Application 29607

Permit 20536

meeting all requirements of the applicable Endangered Species Act for the project
authorized under this permit.

(0000014)

Dated: 5/5/2000


for Harry M. Schueller, Chief
Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 29607

PERMIT 20536

LICENSE _____

ORDER AMENDING THE PERMIT

WHEREAS:

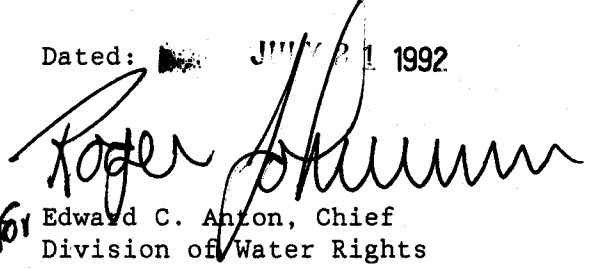
1. Permit 20536 was issued to Heitz Wine Cellars on June 26, 1991 pursuant to Application 29607.
2. Permit Condition 27 (1) should be amended to describe the project as set forth in Department of Fish and Game's memorandum dated June 1, 1992. Specifically that the small coffer dam shall be placed on a small drainage adjacent to and northwest of the main drainage into the reservoir.

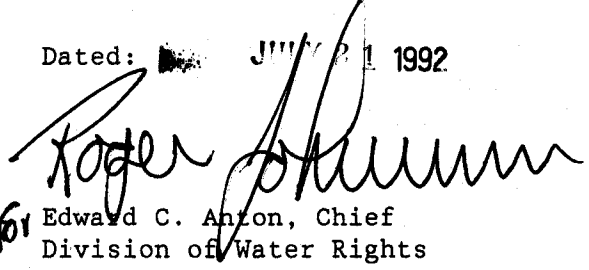
NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 27 (1) of the permit be amended to read:

Creation of a small coffer dam on a small drainage adjacent to and northwest of the main drainage into the reservoir which will serve to retain a pond of water when the reservoir recedes.

(0400500)

Dated:  JUL 1 1992


Edward C. Anton, Chief
Division of Water Rights

STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20536

Application 29607 of Heitz Wine Cellars

500 Taplin Road, St. Helena, CA 94574

filed on November 1, 1989, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

<u>(1&2), Unnamed Stream</u>	<u>Pope Creek thence</u>
<u></u>	<u>Putah Creek thence</u>
<u></u>	<u>Yolo Bypass</u>
<u>(3&4), Unnamed Stream</u>	<u>Burton Creek thence</u>
<u></u>	<u>Maxwell Creek thence</u>
<u></u>	<u>Pope Creek</u>

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
POINTS OF DIVERSION AND REDIVERSION (1) HEITZ RESERVOIR #11: NORTH 2150 FEET AND EAST 300 FEET FROM SOUTHWEST CORNER OF SECTION 18	NW $\frac{1}{4}$ OF SW $\frac{1}{4}$	18	9N	5W	MD
(2) NORTH 600 FEET AND EAST 400 FEET FROM SOUTHWEST CORNER OF SECTION 18	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	18	9N	5W	MD
(3) NORTH 1200 FEET AND EAST 1250 FEET FROM SOUTHWEST CORNER OF SECTION 19	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	19	9N	5W	MD
POINT OF DIVERSION (4) NORTH 750 FEET AND EAST 1200 FEET FROM SOUTHWEST CORNER OF SECTION 19	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	19	9W	5W	MD

County of Napa

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acre
SEE ADDENDUM	SEE ADDENDUM					

The place of use is shown on map on file with the State Water Resources Control Board.

ADDENDUM

Application 29607Permit 20536[illegible]

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 350 acre-feet per annum to be collected from October 15 of each year to May 1 of the succeeding year. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

The maximum rate of diversion to offstream storage shall not exceed 15 cubic feet per second. (000005J)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)

8. Construction work shall be completed by December 31, 1994. (0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1995. (0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)
14. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)
15. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)
16. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction under this permit shall not be commenced until the Department has approved the plans and specifications for the dam. (0360048)
17. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. (0120050)
18. Permittee acknowledges the prior rights of Walter L. Peddy or successor in interest as identified in License 9936 (Application 21433) and the Permit issued pursuant to Application 29533 on file with the State Water Resources Control Board and agrees not to interfere with those rights. (000T001)
19. Permittee shall bypass all flows at Point of Diversion #2 as described in this Permit, until such time as the prior storage rights of Walter L. Peddy or successor in interest as described in License 9936 (Application 21433) and the Permit issued pursuant to Application 29533 have been satisfied during the current collection season. Permittee shall allow Walter L. Peddy and all successors in interest, or a designated representative, reasonable access to the reservoir and point of diversion for the purpose of verifying that the terms of this agreement are met. (0160400)
20. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in State Water Resources Control Board Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220087)
21. The rights acquired under this permit shall be of equal priority with the rights acquired under the permit issued pursuant to Application 29606. (0000113)
22. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 29606, shall not exceed 350 acre-feet per annum. (0000114)

23. To mitigate the 138 large trees removed, permittee shall plant 200 bare-root sapling trees (2+ years old). The 30% increase in number allows for possible sapling mortality. Each sapling shall be planted in accordance with the diagram in Appendix G, Figure 3 of the "Environmental Impact Information (Plants and Animals) for the Heitz Wine Cellars Project" dated March 1991. Saplings shall be protected from animal damage by a tree cage using deer fencing and shall be planted at 10 foot spacing in area (1) as shown on a map on file with the State Water Resources Control Board ("Mitigation map"), and within locations which correspond to the following table:

(A)	25 Coast redwood	(Sequoia sempervirens)
(B)	25 Douglas fir	(Pseudotsuga menziesii)
(C)	25 Canyon live oak	(Quercus chrysolepis)
(D)	25 Digger pine	(Pinus sabiniana)
	25 Ponderosa pine	(Pinus ponderosa)
(E)	75 Calif. black oak	(Quercus kelloggii)*

*Plant at 20 foot or greater spacing.

Each of the above saplings shall be irrigated for five years.

(0400500)

24. One-year-old, bare root replacement trees shall be planted to mitigate the 660 trees of young sawtimber size with an increase in number to 800 to allow for possible seedling mortality. Each seedling shall be planted with an Agriform (or equivalent) fertilizer pellet, covered with a rigid plant-protection tube and irrigated for five years.

Seedlings shall be planted at 5 foot spacing in area (2) on the Mitigation Map and within location which correspond to the following table:

(A)	50 Coast Redwood	(Sequoia sempervirens)
(B)	150 Coast Redwood	(Sequoia sempervirens)
(C)	100 Digger pine	(Pinus sabiniana)
(D)	200 Calif. black oak	(Quercus kelloggii)
(E)	100 Ponderosa pine	(Pinus ponderosa)
(F)	100 Douglas fir	(Pseudotsuga menziesii)
(G)	100 Calif. black oak	(Quercus kelloggii)

Figure 4 of Appendix G of the "Environmental Impact Information (Plants and Animals) for the Heitz Wine Cellars Project" dated March 1991 shows typical plantation layout.

(0400500)

25. Fifty-five untreated snags shall be replaced in area (4) on the Mitigation map by one of the following methods:

- (A) Erect a dead tree or girdle an existing tree in clump of redwood trees.
- (B) Girdle an existing tree along edge of forest.
- (C) Find existing dead tree or dead portion of tree and drill 5 holes of 1½" diameter by 8" deep and 5 holes of 3" diameter by 8" deep in each tree. Holes should be distributed at least 2 feet apart.
- (D) Construct one of each birdhouse as shown in Figure 6, Appendix G of the "Environmental Impact Information (Plants and Animals) for the Heitz Wine Cellars Project" dated March 1991.

(0400500)

26. For the enhancement of wildlife values:

- (A) Cattle grazing shall be eliminated from deer habitat on the project property. The removal of cattle from habitat provides more forage for deer -acorns, leaf litter, shrub browse and grass (See Appendix I of the "Environmental Impact Information (Plants and Animals) for the Heitz Wine Cellars Project" dated March 1991.
- (B) One acre of legume plants such as rose clover, vetch and chaparral pea (*Pickeringia montana*) shall be planted and irrigated during the non-rainy season for five years. A diet supplemented by legumes in spring can improve fawn crop.
- (C) One acre of Hollyleaf cherry (*Prunus illicifolia*) shrubs (200/acre) shall be planted, fertilized and irrigated for five years. Each plant shall be protected by a three-foot-diameter deer fence for five years to allow development.

- (D) Protect main drainage on northwest side of the vineyard and enhance old access road for deer migration as shown as deer corridor in location (8) on the Mitigation Map. Enhancement procedures are shown in Appendix G, Figures 1 and 2 of the "Environmental Impact Information (Plants and Animals) for the Heitz Wine Cellars Project" dated March 1991 and include:

- (1) Widening the roadway by thinning shrubs and small trees for a distance of 50 feet either side of centerline.
- (2) Piling and burning cleared shrubs on top of poison oak clumps, hazelnut shrubs or french broom shrubs.
- (3) Piling and leaving piles 20 foot in diameter approximately every 100 ft. along corridor.
- (4) Planting 100 ceanothus and 100 toyon seedlings along corridor in areas where those species are lacking. Plants will be protected until they are able to withstand browsing pressures. (0400500)

27. For the protection and preservation of fish and wildlife to be impacted by inundation of the proposed reservoir site, the following riparian trees will be planted in appropriate soils around the edge of the proposed reservoir shown as location (10) on the Mitigation Map:

50 rooted acorns of Valley oak	(Quercus lobata)
50 one gallon Big-leaf maple	(Acer macrophyllum)
50 one gallon Red or white alder	(Alnus spp.)
100 cuttings Cottonwood or Poplar	(Populus spp.)

Additional wildlife enhancement measures will be:

- (1) Creation of a small coffer dam in the main drainage into the reservoir which will serve to retain a pond of water when the reservoir recedes.
- (2) Dumping a total of two pick-up loads of river-run gravel above the water line to be spread on any gently-sloping portion of the proposed reservoir shoreline.
- (3) Planting fish in the completed reservoir. (0400500)

28. The above construction activities, tree plantings, and other mitigation measures shall be completed within one year from the date of the completion of the reservoir. (0400700)

29. For the protection and preservation of fish and wildlife, Permittee shall bypass a minimum of 0.5 cubic feet per second in the unnamed stream at Point of Diversion #4 during the period of October 15 through May 1. The total streamflow at Point #4 shall be bypassed whenever it is less than the minimum amount for the designated period. (0140500)

30. Applicant shall comply with County ordinances for the construction of the proposed dam and reservoir and adhere to the sediment control plan during vineyard development. (0450300)

31. In accordance with the California Public Resources Code 21081.6, monitoring of the plantations of the 200 saplings and 800 seedlings and provision of drip irrigation for same shall be by a registered landscape architect or registered forester with forestland mitigation experience. Said registered professional will inspect the plantations during the fall season after planting and for the succeeding four years to ensure that at the end of five years, at least 138 saplings and 660 seedlings have been established. Said professional will also be contracted to monitor the planting of the 250 riparian trees around the perimeter of the proposed reservoir and to ensure that the snags have been erected according to specifications.

A monitoring agent shall be contracted to ensure that the one acre of legume forage is irrigated during the non-rainy season for five years and the one acre of Hollyleaf cherry shrubs are fertilized and irrigated for five years. The same agent shall confirm that 100 toyon and 100 ceanothus seedlings have been planted and covered with plant-protectors, that the coffer dam has been constructed and

that the river-run gravel has been deposited above the waterline of the proposed reservoir.

A written monitoring report accompanied by photographs must be submitted annually to the State Water Resources Control Board Division Chief. (0400700)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

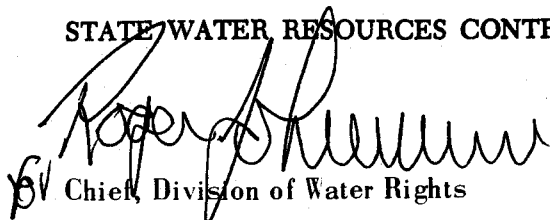
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JUNE 26 1991

STATE WATER RESOURCES CONTROL BOARD


Chief, Division of Water Rights